HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 528 of 2006

SINGLE BENCH: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellants/Defendants :

1. Rajkishore Shrivastava, Son of Shri Shyam Bihari Shrivastava, aged about 70 years.
2. Rajesh, son of Shri Rajkishore Shrivastava, aged about 46 years.
3. Rakesh, son of Shri Rajkishore Shrivastava, aged 44 years,
4. Rajiv, son of Shri Rajkishore Shrivastava, aged about 44 years.

All castes Hindu Resident of Mohalla Khaparganj, in front of Lokswar Press, Tahsil, Town and District Bilaspur (C.G.)

VERSUS

Respondent/Plaintiff

Girja Bai, D/o Shivdayal, wife of Shri Gajadhar, aged about 43 years, Caste Kachhi (Kachhwaha), Resident of Mohalla Khaparganj, Tahsil, Town and District Bilaspur (C.G.)

MEMO OF APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

Present:
Shri N.L.Soni, Counsel for the appellants.
Shri Kamal Pandey, Counsel for the respondent.

ORAL ORDER
(Passed on 12.04.2007)

Heard on admission.

2. Appellants/Defendants are aggrieved by the judgment and decree dated 29th September, 2006 passed in Civil Appeal No. 02-A of 2006 whereby the judgment and decree passed by the 4th Civil Judge Class-I, Bilaspur in Civil Suit no.15-A of 2005 on 27th December, 2005 for eviction

of the tenant on the ground of Section 12 (1) (c) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as 'the Act'), was affirmed.

3. In the eviction suit, the appellants/defendants had denied the relationship of landlord and tenant and had pleaded that their father Shyam Bihari Shrivastava had purchased the suit house from Mathura Prasad on 2.2.1950. Both the Courts below have recorded a concurrent finding that the appellants/defendants have failed to establish the said fact.

4. Shri N.L.Soni, learned counsel for the appellants/defendants submitted that no documentary evidence evidencing the sale of the suit house by Mathura Prasad to Shyam Bihari Shrivastava was adduced by the appellants/defendants. He placed reliance on Ex.D-3 to D-9 which are money order receipts for Rs.10/- per month. No inference could be drawn in favour of the appellants/defendants on the basis of these receipts. In this manner, both the Courts below have correctly recorded a finding that the appellants/defendants had failed to establish that the suit house was purchased by their father Shyam Bihari Shrivastava from Mathura Prasad.

5. Shri N.L. Soni, learned counsel for the appellants next contended that in the absence of a probate, having been filed by the plaintiffs, no decree for eviction could be passed in their favour. He placed reliance on ***Jamshedji Dubash*** **vs.** ***Meharbai Rustumji Dubash and others,*** **2003 (4) Civil L.J. 335** and ***Darshan Singh and others*** **vs.** ***Gujjar Singh (dead) by L.Rs. and others,*** **AIR 2002 SC 606.** However, upon perusal of the record, it is clear that the defendants had admitted in notice Ex.P.4 that on the death of Shyam Bihari Shrivastava, the defendants were residing in the house as tenants of the plaintiff. Apart from this, the plaintiffs have also filed money order receipts Ex.P.5 and P.6 for the rent paid by the defendants. In a suit for eviction, question of title is not germane. The defendants having admitted the relationship of landlord and tenant in the notice Ex.P.4 and also sent the rent through money order, the defence taken by appellants/defendants is not established.

Case law cited by the learned counsel for the appellants being clearly distinguishable does not help the appellants.

6. In that view of the matter, the judgment and decree passed by both the Courts below granting eviction of the tenant under Section 12(1)(c) of the Act is impeccable. No substantial question of law arises for determination in this appeal which is accordingly dismissed at the stage of admission. No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani